

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 70 of 1989

NAGAR PALIKA, RAISINGHNAGAR
V/S
RAMESHWAR LAL

Mr. JASWANT MAL BHANDARI, for the appellant

Mr. RK SINGHAL, for the respondent

Date of Order : 3.11.2006

HON'BLE SHRI N P GUPTA, J.

JUDGMENT

This appeal has been filed by the Municipality, the defendant, challenging the judgment and decree of the learned Addl. District Judge, Raisinghnagar dt. 17.4.1989, whereby the judgment and decree of the learned trial court was reversed, and decree for perpetual injunction was passed, restraining the defendant appellant, from disturbing the possession of the plaintiff over the land in question.

The facts of the case are that on 3.10.1983 the plaintiff filed the present suit, alleging that the plaintiff is living on a land in Block Ward No. 10, which earlier was known as E Block of the Municipal area, since before 1971. It was alleged that the total land in their possession is 100 x 100 ft., and that at the time when the

houses were constructed the habitation was very scant. It was alleged that the grand father of the plaintiff, being Pokhar Ram was a Khoji in the Police Department, and was subsequently appointed as Watchman in the Mandi, and he was living on the land in question by erecting hutments since 1940 along with family. According to the plaintiff, the plaintiff being belonging to backward class Meena, the then Municipality Raisinghnagar, vide resolution no. 7 dt. 13.2.57, sold the land in question to the plaintiff's grand father Pokhar Ram, as Ahata No. 32 of E Block, price whereof was deposited against receipt no. 51 dt. 18.3.57. The plaintiff has produced the copy of the Patta, and the receipt. It was alleged that the plaintiff's grand father died some 22 years back. According to the plaintiff one of the influential clerk in the Municipality nurses grudge against the family of the plaintiff, therefore, he misplaced the file of the plaintiff's house, and on his behest municipal authorities started denying the plaintiff's title and started harassing and threatening him to dispossess, and the plaintiff apprehends, that as happened in the past, that the house of plaintiff's uncle Gumana Ram was demolished in his absence, and the family was mercilessly dispossessed, they may also be dispossessed. The plaintiffs therefore filed an application for regularisation of this land, and also deposited the necessary charges, and that in the earlier survey also the plaintiff's name is entered. Then, in the campaign

"Prashashan Saharon Ki Ore" the municipal employees threatened the plaintiff to dispossess. With this it was alleged that on 2.10.1983, it was given out that his possession would not be regularised he should vacate, else his house will be demolished, and debris will be removed. Hence, the suit was filed for the above reliefs.

The defendant contested the suit, alleging that the plaintiff has not produced any evidence about his old possession, no site plan has been produced, and no boundaries have been shown. It was denied that he is in possession since 1971. According to the defendant, the plaintiff has another land in Gaushala Block Raisinghnagar, being Ahata no. 58, and has also residential Plot in Chak 12TK Tehsil Raisinghnagar, in which village he has about 12.5 bighas of agricultural land, and the plaintiff lives in village 12 TK. It was also contended that the measurements given are wrong, and land was sold as Gaushala block in the year 1964, and that by simply tethering cattle, or sleeping or defecating, and it cannot be said that the plaintiff is in possession. The allegation about the plaintiff's grand father being Khoji, and then Chowkidar, was denied. Likewise his living there since 1940 was also denied, so also the allotment of plot was also denied. Then, it was pleaded, that plaintiff's grand father was allotted Ahata no. 32 in E Block, Raisinghnagar, but that was at a different place, and it is wrong that

plaintiff's grand father started living there. It was then pleaded that the allotment in E Block was immediately cancelled by the State Government, and the price deposited were also refunded, and thus the plaintiff's grand father also received back the price, knowing it fully well, receipt and Patta has been produced, wrongly which is a criminal offence. It was also pleaded that the land is a municipal land, and it appears that the plaintiff in collusion with some employees of municipality has got misplaced the record, while according to the defendant record should be available with the municipality. Then, it was also pleaded that the plaintiff is not entitled to have the land regularised, as it is land of public way, and Public Park. The other allegations of the plaintiff were also denied.

The plaintiff thereafter filed a rejoinder, maintaining the pleas of the plaint, and produced the copies of the receipts about depositing the price of the regularisation and the stamps. It was pleaded that the authorities of municipality assured for regularisation, and it was also pleaded that in 1985, without hearing the plaintiff, the application for regularisation was illegally rejected.

Learned trial court framed as many as 11 issues. However, after completing the trial, the learned trial

court dismissed the suit.

Deciding issue no. 4, about the plaintiff's grand father living there since 1940, and Ahata no. 32 having been sold vide resolution dt. 13.12.1957, it was considered that no person living in the year 1940 has been produced, and after referring to the evidence it was held, that the plaintiff was not in possession since 1940, Patta Ex. 2 was not a permanent Patta, rather it was only a sanction for allotment, and in accordance with the stipulations thereof, making of allotment was sanctioned. However, there was no construction, nor his possession was there, and therefore, it cannot be said that old possession was regularised vide Ex.-2. It was also found that the amount deposited by the plaintiff was also requested to be refunded vide Ex. A-12, and was refunded, as appears from the entry of cash books Ex. A-14. Thus, it was concluded that Ahata no. 32 E Block was not sold to Pokhar Ram. Then, various other issues were also decided against the plaintiff, including issue no. 10, relating to the question, as to whether the land in question is a public place, and public park. It may also be noticed, that while recording finding on issue no.4 the learned trial court also observed, that the documents Ex. A-13 and 14 are more than 30 years old, therefore, their genuineness cannot be doubted. Thus in the result the suit was dismissed.

The plaintiff filed an appeal against this judgment and decree, and the learned lower Appellate Court considered the matter in detail, and decided issue no. 4, which was most crucial. Oral evidence of the parties, and the receipt and Patta Ex. 1 and 2 were considered, so also the electoral roll of the year 1958, being Ex. 8 and Ex.10 were also considered, and then dealing with the contention of the defendant, about the Patta given in 1957 to be relating to other Gaushala block, it was considered that municipality has not produced any plan of E Block, nor has it produced the old record, which must be available with the municipality, because admittedly E Block scheme was prepared, wherein the plaintiff's grand father was allotted the plot. Likewise, it was also considered that D.W.1 has admitted, that in the year 1955-56 a plan of E Block was prepared, wherein the Ahata was allotted. Then the site plan has not been produced. For the evidence of D.W.1, who deposed that allotment of Pokhar Ram was cancelled, and it was noticed, that no order of cancellation was made available to the Court, nor the other supporting documents of Ex. A-13 and 14 were produced. It was also noticed that it has not been clarified as to which authority cancelled the Patta, and that, by which order the allotment had been cancelled, relevant orders must be available with the municipality. It was also considered that other circumstances shows, that the whole story has been cooked up about cancellation of Patta, which is not supported by

any documentary evidence. It was also noticed, that the relevant municipal employees dealing with the matter have also not been examined, and D.W.5 Cashier Heeralal has admitted, that on the complaint filed against him, he has been relieved from service on 31.5.1984. Thus, this is a million dollar circumstance to indicate that this story about cancellation, and refund of the amount to the plaintiff has been manipulated by this person. It is also admitted that Ram Pratap plaintiff had initiated criminal proceedings against this witness, which shows that there was animosity between the plaintiff, and this witness. Thus, it was found, that the plaintiff is continuing in possession since 1940, and were given Patta in 1957, and he is being unnecessarily harassed by the municipal authorities. Then, the learned lower Appellate Court also held, that D.W.3 Ved Prakash, who is old municipal employee has admitted that the plaintiffs were living on this land in 1970, when the area was developed. Likewise, D.W.4 has also deposed about the plaintiff's possession. Then, D.W.5 has admitted that plaintiff's grand father Pokhar Ram was living towards the west of the railway line and the plaintiffs had come into possession in 1974. Interalia with these findings it was concluded, that the land was allotted to the plaintiff vide resolution no. 7 dt. 13.2.1957, and that Patta has not been cancelled, and that the plaintiff has applied for regularisation, simply because the file of the allotment was not available, and the employees of the

municipality were harassing, but then the plaintiff is in old possession and Patta was established, and thus the issue was decided in favour of the plaintiff. Then, the findings on other issues were also discussed, and after appreciating the evidence the findings were reversed, and the suit was decreed.

This appeal was filed on 22.5.1989, and was admitted on 1.9.1989, on two substantial questions of law:-

- "(1) Whether the learned Additional District Judge, Raisinghnagar has failed to consider the important and material evidence on record?
- (2) Whether the land of the public park or public road can be regularised in favour of the plaintiffs?"

Arguing the appeal, learned counsel for the appellant laid much stress on Ex.A-12, A-13, and A-14 to contend, that the plaintiff's grand father applied for refund of the amount, whereupon order was made, and the amount was refunded, and the cheque was given, with the result that Ex.-1 and Ex.2 Patta and receipt lose their significance. Regarding second substantial question of law about the land being of public park and public road, nothing was submitted by the learned counsel for the appellant, and even on being asked, he could not point out any material on record, wherefrom, it may be concluded that

the land is a land of public road and public park.

Learned counsel for the respondent, on the other hand submitted, that a look at the entire written statement would show, that no pleading was taken on the side of the defendants, regarding these documents. Not only this, these documents were not put to the plaintiff, when he appeared in the witness box, and it was also submitted, that as rightly found by the learned lower Appellate Court, that no order of cancellation of allotment has been produced, nor is it shown that any notice was given to the allottees pursuant thereto, they have applied for refund of the amount, nor any supporting document has been produced, rather all relevant primary evidence and supporting evidence relating to these documents have not been produced and therefore, the learned lower Appellate Court was right in arriving at the findings. It was also submitted that the learned lower Appellate Court did not fail to consider any material documents, rather all the documents have been considered and have been disbelieved.

I have considered the submissions and have gone through the record.

In my view, from the pleadings contained in the written statement as noticed above, this much is clear, that even according to the defendant it is admitted

position that Ahata No. 32 in E Block was allotted to the plaintiff's grandfather in the year 1957. A look at Ex.2 shows, that thereby the land was allotted to the allottee, and it was not a mere sanction for allotment. Various stipulations of allotment were incorporated on reverse side of this document. Then it is not the case of the defendant also that by this Ex.2, the land was not allotted, or that it was a sanction of allotment, rather it is admitted case of the defendant, that Ahata No. 32, in E Block was allotted to plaintiff's grandfather Pokhar Ram. Thus, the inference drawn by the learned trial Court is wholly contrary to record. After this being clear, what is significant to note is, that the defendant has taken a dual stand; first being that this land allotted as Ahata No. 32 in E Block is not a land in question, but is a different land, and the other stand taken is that the scheme of E Block was cancelled by the State Government, shortly after allotment, and therefore, the allotments were cancelled, and money was refunded. Suffice it to say that the learned lower Appellate Court has rightly found, that there is no evidence to show that Ahata No. 32 in E Block was any different land. No site plan of E Block was produced by the defendants, from key plan whereof it could be clear, that the location of E Block was at a different place. Significantly, so far cancellation is concerned, if the Government had cancelled the scheme as such, obviously there must be some orders of the State Government, or any

competent authority canceling the scheme, but then admittedly no such order has been produced. In that view of the matter, simply on the basis of Ex.A-12, A-13 and A-14, it cannot be said that Ex-2 was cancelled.

Yet another important aspect of the matter is, that a look at the entire statement of the plaintiff P.W.1 shows, that three documents Ex.A-12, A-13 and A-14 were not confronted to him. Then in the written statement a vague and general plea was taken that amount has been refunded to the plaintiff's grand father and no details of the particulars were given, as to how and when it were refunded. Then learned counsel for the respondent also pointed out certain suspicious circumstances in Ex.A-14, to show, that this document appears to have been subsequently prepared, using blank space. In any case, the findings of the learned lower Appellate Court show, that it has considered these three documents, and for reasons, the documents have been disbelieved, and in my view rightly so.

In that view of the matter, it cannot be said that the learned Addl. District Judge has failed to consider any important and material evidence on record. Thus, the obvious conclusion is, that the substantial question No.1, as framed, is required to be, and is, answered against the appellant.

The net result is that the appeal has no force and the same is, therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA) ,J.

/Sushil/